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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,005	08/01/2006	Philippe Perovitch	0603-1003	1374

466 7590 05/10/2010
YOUNG & THOMPSON
209 Madison Street
Suite 500
Alexandria, VA 22314

EXAMINER	
SASAN, ARADHANA	

ART UNIT	PAPER NUMBER
1615	

NOTIFICATION DATE	DELIVERY MODE
05/10/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/588,005	PEROVITCH ET AL.	
	Examiner	Art Unit	
	ARADHANA SASAN	1615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-10 and 13-24*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Aradhana Sasan/
Examiner, Art Unit 1615

/Humera N. Sheikh/
Primary Examiner, Art Unit 1615

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments (filed 04/22/2010) have been fully considered but are not persuasive.

Rejection of claims under 35 USC 102(b)

Applicant argues that Pankhania (WO 02/083119 A1) fails to enable one of ordinary skill in the art to make the claimed subject matter without undue experimentation and that while Pankhania mentions buccal administration, they fail to teach or suggest, or enable one to overcome the prior established problems. Applicant argues that the high dosages of ibuprofen used in the Pankhania composition, even when as little as the lowest 50 mg dosage, would recrystallize in the mouth environment and thus encounter problems. This is not persuasive because the composition taught by Pankhania can be retained in the oral cavity and since this composition contains all the structural components of the instant claims, the delivery of the active ingredient across the oral or buccal mucosa (i.e., the passive diffusion of the active ingredient across the buccal mucosa) will necessarily occur. Moreover, claims 1-8, 13-21, and 23-24 do not require a specific dosage of ibuprofen. The low dosage of ibuprofen disclosed by Pankhania anticipates the low dosage recitation.

Rejection of claims under 35 USC 103(a)

Applicant argues that like Pankhania, Mitra fails to teach or suggest the buccal administration of a low dosage lipophilic anti-inflammatory or anti-mycotic drug that is passively diffused into buccal and throat mucous membranes, that even the lowest dosage of 50 mg is double the dosage of 25mg recited in claim 9, and that even the 50 mg ibuprofen amount when applied buccally would provide local undesired re-crystallization. This is not persuasive because both references teach dosage forms that can be retained in the mouth (tablets and lozenges) and Pankhania teaches all the structural components of the composition. The dosage of ibuprofen lysinate is a parameter that one of ordinary skill in the art can modify and the recited dosage is an obvious variant unless there is evidence of criticality or unexpected results.